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EXAMINER

BRAHAN, THOMAS J

ART UNIT PAPER NUMBER

3652

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/001,620

Applicant(s)

POINDEXTER ET AL.

Examiner

Thomas J. Brahan

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*ML*

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-10, 12-14, 19-21, 24-32 and 34-48 is/are pending in the application.
- 4a) Of the above claim(s) 41-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-10, 12-14, 19-21, 24-32 and 34-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. In the response filed March 24, 2004, Applicant confirms the election of inventions Figures 11 and 12, covered by claims 1-4, 6-10, 12-14, 19-21, 24-32 and 34-40. This confirmation appears to be in error because the response filed October 27, 2003 elected the species of Figure 3, not Figures 11 and 12, and because there are no Figures 11 and 12 in this application. As the claims listed above correspond with those previously examined, these are the claims that are treated below. New claims 41-48 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species. The election made in the response of October 27, 2003 was with traverse based upon a statement that the additional claims could be examined without a burden to the examiner. This was not found to be persuasive for the reasons put forth in the Office action of January 22, 2004, which made the restriction requirement final.

2. The specification is objected to as failing to provide clear antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). The terminology of the specification does not correspond to the terminology of the claims. Page 4, lines 9-17 of the specification states that:

The second frame 32 also includes a plurality of guide rollers 72 (one shown) that engage the support members 60 of the base frame 28. The rollers 72 roll within the support members 60 and allow the extension members 64 to extend along the support members 60 until the rollers 72 contact a protrusion or stop (not shown) within each support member 60 to prevent further extending of the extension members 64. The second frame 32 also includes transport support rollers 76 mounted on the extension members 64 that the dump bed 40 rolls upon. One or more of the guide devices discussed below could be substituted for the transport support rollers 76.

In claim 1, line 7, the term "guide device" is inconsistent with the terminology of the specification, as claim should use the term "guide roller", as the specification defines the term "guide devices" as an alternative structure which can be substituted for the support rollers 76. In a similar manner, in claim 1, line 15, the term "guide" is inconsistent with the terminology of the specification, as the claim should use the term "support roller". The specification states that the term "guide" is an alternative to the roller support structure of the elected species shown in figure 3. While using a broader term in the claims than in the specification is permitted, a broader term should not be used if it causes confusion or if the term has been assigned a specific meaning by the applicant in the specification. Claims 30, 31, 37, and 38 also use the term "guide" when the term "roller" would be the correct term if applicant were considering these claims as drawn to the embodiment of Figure 3. Appropriate correction is required.

3. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which applicant regards as his invention.

4. Claims 1-4, 6-10, 12-14, 19-21, 24-32, and 34-40 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For example:

a. Claim 1, line 11, refers to a "parallel" position for the carriage. This renders the claim indefinite

as the claim fails to specify an object or reference line to which the carriage is parallel. Claims 20 and 25 also recite an undefined parallel position.

b. In claim 1, lines 6 and 7, each extension member is recited as including at least one "guide device", and the penultimate line refers to at least one "guide" of each extension members. This is confusing as the specification has defined these two term to be elements which are substituted for the guide rollers and the support rollers. The specification has not defined these term as to permit them to be used in a broader aspect which could have these elements as the rollers of the embodiment of Figure 3. A strict interpretation of the claim, base on the language of the specification, would have claim 1 drawn to additional embodiments, which are not shown in the drawing figures. Claims 30, 31, 37 and 38 also use the term "guide" which the specification has as specific to variations of disclosed embodiments other than the elected embodiment of Figure 3.

c. It is unclear as to how the applicant is considering the elected species of Figure 3 as having a drive operable to move the extension member from their retracted position to their extended positions, as recited in claims 2, 6, 8, 12, 13 and 29. The specification has the drive assembly switched off and the drum unlocked, as to have gravity move the extension members. Gravity can not be claimed as a "drive operable to move" an element.

d. It is unclear as to how the applicant is considering the elected species of Figure 3 as having an actuator coupled to the second frame and the carriage, as recited in claims 3, 4, 6, 7 and 9. This is not a feature of the embodiment of Figure 3. Claims 3, 4, 6, 7, 9 and 19-21 are not treated below with rejections based upon prior art.

e. The method of use in claim 9 is not understood. Why would one place the cargo into the transport support as the first step of the procedure, as recited in line 5, and then move the transport support to the extended positions, as recited in line 6, and then bring the cargo back in as recited in line 13? The obvious way to use the device is to extend the transport support outwardly to the rear of the vehicle, load the cargo onto the transport support and then retract the support onto the vehicle. It is also unclear as to how the applicant is considering the method claim 9 as reading on the elected species of Figure 3, as the elected species does not activate a drive to move the two extension members, as recited in line 5, and does not have an actuator to pivot the carriage, as recited in lines 9-15. Claim 9 has not been treated below with rejections based upon prior art.

f. It is unclear as to how applicant is considering claims 13, 27, 34 and 39 as drawn to the elected species of Figure 3, as these claims contradict the disclosure concerning the species, as the claims recite a clockwise and counter clockwise moving winch, not a gravity return winch. Claims 13, 27, 34, and 39 are not treated below with rejections base upon prior art.

g. It is unclear as to how the applicant is considering the method claim 36 as reading on the elected species of Figure 3, as the elected species does not activate a drive to move the two extension members from the retracted position to the extended position, as recited in lines 4 and 5.

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h. In claim 36, line 7 and in line 8, it is unclear as to how the applicant is using the limitation "facilitate rotation of a carriage from a substantially horizontal position to an inclined position, and facilitate movement of a transport support from a retracted position" as the grammar is awkward. Is applicant attempting to claim that the "facilitate" functions occur together with extension of the second frame? Or does the facilitate functions follow the extension? Also in line 9 of claim 36, the term positioned should not be capitalized.

i. It is unclear as to how applicant is considering method claims 37-40 as further limiting the claimed invention, as they are devoid of method step limitations.

j. In claim 38, it is improper to use the term "at least one guide" as the element contacting the transport support, as claim 38 depends from claim 37, and claim 37 already uses the term "at least one guide" for the element that allows telescopic movement of the second frame with respect to the first frame. It is confusing to use the same term for different claim elements.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. § 102(f) or (g) prior art under 35 U.S.C. § 103.

7. Claims 36 and 37, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Prince. Prince shows a method of loading a transport accessory for a vehicle, the method comprising:

mounting a base frame (77,78,80) of the transport accessory to the vehicle;

activating a drive (88) a first time to facilitate movement of a second frame (84, 86) from a retracted position, in which the second frame is substantially nested with the base frame, to an extended position, in which the second frame is telescopically extended from the base frame, facilitating rotation of a carriage (48) from a

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substantially horizontal position to an inclined position, and facilitating movement of a transport support (32) from a retracted position, in which the transport support is positioned substantially over the carriage, and an extended position, in which the transport support is telescopically extended from the carriage;

loading cargo onto the transport support (32); and

activating the drive a second time to move the transport support from the extended position to the retracted position, rotate the carriage from the inclined position to the substantially horizontal position, and move the second frame (84,85) from the extended position to the retracted position.

The extension frame has two side members (84 and 86) which are considered as guided in their cylinders, as recited in claim 37.

8. Claims 1, 8, 10, 12, 14 24, 25, 26, 28-32, 35-38, and 40, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over McKee (cited by applicant) in view of Poindexter. McKee shows the basic claimed combination of a cargo bin which has a base frame (12) with guides (rollers), a pivoting carriage (13) with rollers, and a transport support (10) with a track which rides carriage rollers, and is supported on the base frame rollers when in the retracted position. McKee varies from the claims as the base frame (12) does not have a telescopic extension. Poindexter shows a similar cargo handling system with a base frame (33) with telescopic extensions (81 and 82). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the cargo bin and track assembly of McKee by making its base telescopic, to increase its operating range, as taught by Poindexter. Attaching the base frame of McKee to the vehicle with bolts and bolt apertures, as recited in claims 10 and 32 would have been the obvious method, and would have been within the limit of routine skill in the art at the time the invention was made by applicant. Attaching a roller to the bin (10) of McKee, as recited in claims 14, 28, 35, and 40, would also have been obvious in view of the Poindexter reference, as it teaches using a supporting roller (137). The method of use would be as recited in claim 36.

9. Claims 2, 34 and 39, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over McKee in view of Poindexter, as applied above to claims 1, 29 and 36, and further in view of Goode. McKee, as modified, shows the basic claimed cargo bin, but varies from the claims by using a hydraulic cylinder as the drive means instead of a winch. Goode shows a similar pivoting load transport with a winch (27) driving the system. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the cargo bin assembly of McKee by substituting a winch for cylinder drive, as being an obvious art recognized equivalent which is well known in the art, as shown by Goode.

10. Newhard, Hubbard and Russ are cited as showing related load handling systems.

11. Applicant's remarks in the response filed March 25, 2004 have been considered, but are deemed moot in

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view of the above new rejections. An inquiry concerning this communication should be directed to Thomas J. Brahan at telephone number (703) 308-2568. The examiner's supervisor, Ms. Eileen Lillis, can be reached at (703) 308-3248. The fax number for all patent applications is (703) 872-9306.

*T. J. Brahan 7/9/04*

Thomas J. Brahan  
Primary Examiner  
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